

[Submitting Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

People of the State of California, et al.

v.

Meta Platforms, Inc.; Instagram, LLC; Meta
Payments, Inc.; Meta Platforms Technologies,
LLC,

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION THIS
DOCUMENT RELATES TO:

4:23-cv-05448.

MDL No. 3047

Case Nos. 4:22-md-03047-YGR-PHK
4:23-cv-05448-YGR

**STATE ATTORNEYS GENERAL'S
MOTION FOR RELIEF FROM
NONDISPOSITIVE PRETRIAL ORDER
OF MAGISTRATE JUDGE**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Pursuant to Federal Rule of Civil Procedure 72(a), 28 U.S.C. § 636(b)(1)(A), and Civil Local Rule 72, Plaintiff State Attorneys General respectfully submit this Motion for Relief from the Nondispositive Pretrial Order of the Magistrate Judge relating to Discovery Management Order No. 14 Following the Discovery Management Conference of January 16, 2025. (ECF No. 1646).

The State Attorneys General, as chief law enforcement officers in their respective states, have authority to bring enforcement actions independent of other state agencies. The Discovery Management Order No. 14 Following the Discovery Management Conference of January 16, 2025 (ECF No. 1646) (hereinafter, “DMO 14” or “Order”) disrupts this internal state organization by reading Rule 30(b)(6) to require State AGs to provide testimony for multiple distinct state government agencies in the present enforcement action, since each “State” is a “Party,”¹ notwithstanding that those other agencies are uninvolved in this litigation besides Meta’s creative discovery designs. (See Order at 17, 19, and 21).² In the same breath, the Order concludes that there is “no way for Meta to try to take discovery from state agencies by using a 30(b)(6) deposition notice directed to a Plaintiff,” seemingly ignoring the fact that Meta’s Notices defined each “Plaintiff” “State” to encompass 200-plus state agencies and unfamiliar topics, information for which the State AGs would either need to gather from those agencies or designate a testifying witness from those agencies themselves.³

There is no case law, anywhere, concluding that multiple state agencies can be subject to a single Rule 30(b)(6) deposition notice, and DMO 14 does not cite any such authority. *See Bensiek v. Lamone*, No. CV JKB-13-3233, 2017 WL 659929, at *2 (D. Md. Feb. 14, 2017) (“Plaintiffs . . . cited no authority for the notion that a designee for one governmental agency can testify as to the

¹ Neither the State of Maryland nor the State of New Jersey are parties to this suit, but rather, it is each of those states’ respective office of the attorney general that is the named Plaintiff, as well as the New Jersey Division of Consumer Affairs, but DMO 14 nevertheless grouped these states with the other State AG Plaintiffs without explanation.

² DMO 14 wrongly generalizes that every State AG exercises its “parens patriae” authority in pursuing actions under state consumer protection law. (Order at 20); *see, e.g., People v. Ashford Univ., LLC*, 319 Cal. Rptr. 3d 132, 165 (Cal. Ct. App. 2024) (discussing constitutional authority of California State AG, as chief law enforcement officer, to bring consumer protection claims).

³ Topics in Meta’s Amended Rule 30(b)(6) notices which fall entirely outside of the purview of the State AGs include Topics 3, 7, 13, 18 and 19.

knowledge of another governmental agency.”). DMO 14 overlooks the fact that Meta’s Rule 30(b)(6) notices (hereinafter, “Notices”) defined each “State” to include multiple state agencies and does not adequately address how the State AGs would be responsible for either learning that information from state agencies or presenting witnesses from nonparty state agencies for testimony. These legal conclusions and factual findings are both “contrary to law” and “clearly erroneous.” *See* Fed. R. Civ. P. 72(a).

I. Portions of the Magistrate Judge’s Order to Which an Objection is Made

The State AGs object to the portion of DMO 14 discussing 30(b)(6) disputes, specifically the legal issue of whether Meta properly noticed its Rule 30(b)(6) Notices to include multiple state agencies, and the factual issue of whether Meta seeks party discovery from state agencies. (Order at 15–21). DMO 14 concludes that State AGs bringing actions in their independent enforcement authority under state or federal laws are charged with providing party testimony on behalf of the “State,” including with respect to independent state agencies otherwise uninvolved in this case, because the “State” is the “Party.” DMO 14 misapprehends a long-recognized, fundamental feature of state sovereignty: States are free to “allocate authority among different officials who do not answer to one another. . . .” *Berger v. N. Carolina State Conf. of the NAACP*, 597 U.S. 179, 191 (2022); *see, e.g.*, S.C. 2024–25 Appropriation Act, Part IB, § 59.16. States are neither monoliths nor are they corporate conglomerates. DMO 14 ignores the overwhelming weight of relevant federal authority and misunderstands how Meta’s Notices seek agency discovery.

II. Court Action Requested

The State AGs ask the Court to hold that the Magistrate Judge’s conclusion that Meta may notice a single 30(b)(6) deposition to multiple agencies in state law enforcement actions is “contrary to law” and “clearly erroneous.” Fed. R. Civ. P. 72(a). The State AGs ask the Court to deem Meta’s Notices improper under Rule 30(b)(6) and to direct Meta to issue amended, appropriately targeted individual notices and subpoenas to “a governmental agency” directly rather than seeking information through each state as a monolith.

III. Reasons and Authority Supporting the Motion

Under Fed. R. Civ. P. 72(a), a magistrate judge’s order on a non-dispositive motion may be

modified or set aside if its legal conclusions are “contrary to law” or if its factual determinations are “clearly erroneous.” Fed. R. Civ. P. 72(a). “The magistrate’s legal conclusions are reviewed *de novo* to determine whether they are contrary to law.” *Guidiville Rancheria of California v. United States*, No. 12-CV-1326 YGR, 2013 WL 6571945, at *1 (N.D. Cal. Dec. 13, 2013) (citation omitted)). Factual determinations may be overturned under the clear error standard when “the court reaches a ‘definite and firm conviction that a mistake has been committed.’” *Guidiville*, 2013 WL 6571945, at *1 (citation omitted)).

A. One Governmental Agency Cannot be Required to Provide Rule 30(b)(6) Testimony based on the Knowledge of Other Distinct Governmental Agencies

Despite what DMO 14 insinuates, the State AGs have never argued that they were exempt from Rule 30(b)(6) by virtue of their status as law enforcement agencies. (*See* Order at 21). Certainly, Rule 30(b)(6) itself contemplates that “a party may name as the deponent . . . a governmental agency or other entity.” Fed. R. Civ. P. 30(b)(6). But the plain language of Rule 30(b)(6) is phrased in the singular when testimony is from “a governmental agency.” Fed. R. Civ. P. 30(b)(6). That state law enforcement agencies exercising their independent enforcement authority can trigger uninvolved state agencies to be required to provide party testimony finds no support in relevant case law, and neither DMO 14 nor Meta cite any such authority. (*See* Order at 15–21). The few courts that have considered this issue have concluded that “[t]here is no duty imposed [under Rule 30(b)(6)] to inquire into the knowledge of another entity.” *Covington v. Semones*, 2007 WL 1052460, at *1 (W.D. Va. Apr. 5, 2007); *Bensiek*, 2017 WL 659929, at *2 (“It is one thing to find [the State AGs] have the practical ability to obtain documents and basic information from nonparties, [but] it is quite another to expect that they should immerse themselves into another state agency’s records and be able to testify as to that other agency’s knowledge.”).

Courts are even reluctant to require corporate affiliates to provide testimony for a sister company without some requisite showing of factors like self-involvement or centralized decision making. *See In re: Ski Train Fire of November 11, 2000 Kaprun Austria*, 2006 WL 1328259, at *9 (S.D.N.Y. May 16, 2006) (rejecting 30(b)(6) notices to corporate parent seeking subsidiary information because it is not appropriate “to require a corporate parent to acquire all of the

1 knowledge of the subsidiary on matters in which the parent was not involved, and to testify to those
 2 matters in a manner which binds the parent, a separate legal entity”). The only cases Meta can cite
 3 in support are those where these factors are present, namely, **cases following mergers:** *Emhart*
 4 *Indus., Inc. v. Univar USA, Inc.*, 2009 WL 10675670, at *4 (W.D. Wash. Feb. 12, 2009); *Santa*
 5 *Clarita Valley Water Agency v. Whittaker Corp.*, 2020 WL 8102054, at *9 (C.D. Cal. July 9, 2020);
 6 *Int’l Bhd. of Teamsters, Airline Div. v. Frontier Airlines, Inc.*, 2013 WL 627149, at *5 (D. Colo.
 7 Feb. 19, 2013); **cases about contract negotiations:** *Bigsby v. Barclays Cap. Real Est., Inc.*, 329
 8 F.R.D. 78, 82 (S.D.N.Y. 2019); *Oliver v. Greenwell*, 2023 WL 2524901, at *1 (E.D. Mo. Mar. 15,
 9 2023); **cases about retained agents or vendors:** *Anstead v. Va. Mason Med. Ctr.*, 2022 WL
 10 1641425, at *4 (W.D. Wash. May 24, 2022); *Coty Inc. v. Excell Brands, LLC*, 2016 WL 7187630,
 11 at *3 (S.D.N.Y. Dec. 9, 2016); *Calzaturificio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co.*, 201 F.R.D.
 12 33, 38 (D. Mass. 2001); **or a case where corporate affiliates shared a president:** *Erenler v. TJM*
 13 *Props., Inc.*, 2022 WL 18492699, at *6 (M.D. Fla. Nov. 7, 2022). Cases Meta may cite about
 14 depositions to the “United States” are inapposite because they either do not concern depositions,
 15 *United States v. Fed. Res. Corp.*, 2012 WL 1623408, at *3 (D. Idaho May 9, 2012) (discussing
 16 litigation holds and documents); or where they do, they do not address the present issue about
 17 independent law enforcement authority and otherwise uninvolved, distinct governmental agencies.
 18 *See United States v. Land O’Lakes, Inc.*, 2018 WL 11411337, at *1 (W.D. Okla. Oct. 24, 2018)
 19 (case brought by U.S. DOJ stemming from EPA investigation). Meta also may cite cases where a
 20 foreign nation has been deemed an “entity” under Rule 30(b)(6), but where the language of 30(b)(6)
 21 expressly identifies “a governmental agency,” those cases do not address whether multiple
 22 governmental agencies can be required to testify under a single Rule 30(b)(6) notice. *See Cont’l*
 23 *Transfert Technique Ltd. v. Fed. Gov’t of Nigeria*, 308 F.R.D. 27, 33–34 (D.D.C. 2015).

24 Here, the State AGs pursued this case in their independent enforcement capacities as set
 25 forth in applicable state and federal law. *Berger*, 597 U.S. at 191. Given the clear weight of relevant
 26 authority, DMO 14’s conclusion that multiple governmental agencies can be subject to party
 27 testimony under a single Rule 30(b)(6) notice in a state law enforcement action is “contrary to law.”
 28 *See Fed. R. Civ. P. 72(a); Bensiek*, 2017 WL 659929, at *2; *Covington*, 2007 WL 1052460, at *1;

1 *In re: Ski Train*, 2006 WL 1328259, at *9.

2 **B. The State AGs are Put in the Impossible Position of Testifying about Other**
 3 **Agencies' Information Not Reasonably Available to the State AGs.**

4 DMO 14 concluded that there is “no way for Meta to try to take discovery of state agencies
 5 by using a 30(b)(6) notice directed to a Plaintiff,” seemingly because the State AGs may designate
 6 whomever they wish to be a witness. (Order at 20). This conclusion does not account for the fact
 7 that Meta defined “State” in its Notices to include information from over 200 agencies that were
 8 ordered last September to produce documents in this litigation⁴, or that the State AGs have no
 9 authority to compel witnesses from those agencies to testify. Nor does it account for the fact that
 10 several topics in Meta’s Notices seek information entirely within the purview of those independent
 11 state agencies such that even if State AGs presented their own witnesses, state agency information
 12 is not reasonably available to them given agencies’ prerogative to refuse cooperation under the
 13 authority of state governors or other separately elected officials, not to mention the sheer volume
 14 of information that would entail reviewing and preparing. *See Bensiek*, 2017 WL 659929, at *2.
 15 Given the scope of Meta’s topics, DMO 14 overlooks how Meta defined State to capture multiple
 16 state agencies in discovery and is thus “clearly erroneous.” *See* Fed. R. Civ. P. 72(a).

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25 ⁴Meta defines “State” as “including, but not limited to, the executive and legislative branches,
 26 agencies, offices, departments, divisions, commissions, committees, agents, employees, boards,
 27 instrumentalities, vendors (to the extent the State has possession, custody or control over them),
 28 administrators, and other persons or entities acting on behalf of the State, including, but not
 limited to, the agencies and other entities whose information has been deemed within the State’s
 control for purposes of discovery in Magistrate Judge Kang’s September 6 2024 order (ECF No.
 1117) and any other related entities.”

Dated: February 19, 2025

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